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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVEN WILLIAM DELANDER,

Defendant and Appellant.

D042101

(Super. Ct. No. SCD170382)

APPEAL from a judgment of the Superior Court of San Diego County, Federico Castro, Judge. Affirmed.

A jury convicted Steven William Delander of carjacking while personally using a firearm (Pen. Code, §§ 215, subd. (a), 12022.53, subd. (b)),¹ assault with a semiautomatic firearm while personally using a firearm (§§ 245, subd. (b), 12022.5, subd. (a)), and being a felon in possession of a firearm (§ 12021, subd. (a)(1)). In a bifurcated

¹ All statutory references are to the Penal Code.

hearing, Delander admitted two prior serious felony convictions (§§ 667, subd. (a)(1), 668), two prior serious or violent felony convictions (§§ 667, subds. (b)-(i), 1170.12, 668) and serving three prior prison terms (§ 667.5, subd. (b)). The court denied a request to dismiss the strike priors and sentenced him to prison for 47 years to life: 26 years to life for carjacking with two prior strike convictions, enhanced by two 5-year terms for the prior serious felony convictions, 10 years for personally using a firearm, and one year for a prior prison term. It stayed sentence on the remaining convictions and enhancements (§ 654).

FACTS

On October 10, 2002, Jeffrey Coe drove his car to a Quik-Mart store in Ocean Beach. As Coe walked back to his car from the store, Delander approached him, displayed a handgun and told him he was carjacking the car;² Delander then took the car. Around 10:00 a.m. that morning, San Diego Police Officer David Kingsbury received a radio call that an armed man had taken a car by force. Another officer had stopped the car and was chasing the suspects on foot. Kingsbury drove to the area of the reported

² Delander has requested replacement of appellate counsel because in his opening brief, appellate counsel stated, "Coe was driving his girlfriend's Montero" while Coe testified, "it was my friend's girlfriend's -- Cecelia's vehicle," and appellate counsel stated, "As Coe re-entered the car appellant threw his cigarette at Coe, and said, 'why don't you pick your shit up?'" Coe testified that Delander "kind of threw his cigarette" at him, and Coe said, "why don't you pick your shit up?" These minor discrepancies between the statement of facts in the opening brief and the transcript are irrelevant to any issue that was before the jury and do not show ineffective assistance of appellate counsel.

chase and saw Delander and a woman jump over a fence. Delander was carrying a handgun. Kingsbury identified in court the semiautomatic handgun that Delander was carrying. Delander was apprehended but did not have a gun; he had mud on his hands, knees and feet. Kingsbury found the semiautomatic handgun buried in the mud.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. We granted Delander permission to file a brief on his own behalf. He has responded and seeks replacement of appellate counsel. Delander argues that appellate counsel was ineffective based on inconsistencies between the trial record and appellant's opening brief.

Defendants have a constitutional right to effective counsel in criminal cases. (*Gideon v. Wainwright* (1963) 372 U.S. 335.) The burden is on the defendant to prove he or she received ineffective assistance of counsel. To do so, the defendant must show counsel did not act in a manner expected of a reasonably competent attorney and that counsel's acts or omissions prejudiced defendant. (*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 691-692.) The minor discrepancies Delander points out between the statement of facts in the opening brief and the transcript are irrelevant to any issue that was before the jury, could be made by a reasonably competent attorney, and do not show prejudice to Delander. The minor discrepancies do not show ineffective assistance of appellate counsel. Delander has raised no arguable appellate issue in his supplemental brief. A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436

has disclosed no reasonably arguable appellate issue. Competent counsel has represented Delander on this appeal.

DISPOSITION

The judgment is affirmed. The request for replacement of appellate counsel is denied.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HALLER, J.